



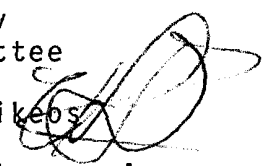
DEPARTMENT OF STATE

Washington, D.C. 20520

July 14, 1976

MEMORANDUM

TO : Executive Secretary  
DCI Security Committee

FROM : A/SY - Victor H. Dikebs 

SUBJECT: DCID 1/19 "Nondisclosure Agreements for  
Intelligence Sources or Methods Information"

REF : DCI Security Committee Memorandum dated  
June 30, 1976, subject as above

Reference asked for the views of the Committee members on a draft DCID 1/19. I concur with the draft subject to the following comments.

At the outset we note that the draft directive does not address the question of whether individuals who presently have access to information containing intelligence sources and methods must execute a new agreement. Substantial problems might be raised if an individual who presently has access refuses to execute a new agreement. Therefore, we suggest that the Department of Justice be consulted for a determination of whether it is possible to make execution of this agreement a condition of continuing access to such information.

Paragraph 2

Insert the word "classified" following the word "any" in line 2; insert the words "or material" following the word "information" in line 2; delete the words "requiring protection against unauthorized disclosure and." These changes are to emphasize that we seek to protect only classified information. The courts in upholding such an agreement have made it clear that they would not enforce it if it were for unclassified information, (United States v. Marchetti, 466 F.2d 1309, U.S.C.A., 4th Cir. 1972). These changes are also designed to

-2-

parallel the language of E.O. 11652 (classified information) and to remove redundant language.

We also note that the definition does not include covert operations. This could be read to be an admission that "covert operations" do not fall within the scope of the phrase "intelligence sources and methods." Given the statutory language to protect such information and the past positions that covert operations were within the phrase, it seems advisable to include a new paragraph "(d) special activities in support of national foreign policy objectives as defined by E.O. 11905."

#### New Paragraph 5

Add the following sentence: "Special nondisclosure agreements required to be executed by individuals with access to communications intelligence shall conform to the policies of this directive."

This is necessary simply to make clear that the special nondisclosure agreements are subject to the terms of this directive.

#### New Paragraph 6

We suggest the following be added:

(g) An acknowledgment that there are criminal penalties for unauthorized disclosure of information containing intelligence sources and methods.

(h) An acknowledgment that the individual does not now have, nor will he ever acquire, any property interest in information containing intelligence sources or methods.

(i) An acknowledgment that there are established procedures which should be followed if the individual wishes to release any information containing intelligence sources or methods.

As a general comment, we suggest the word "containing", which preceeds the phrases "intelligence sources or methods", be replaced with either "revealing" or "derived from" for the purpose of clarity.

MEMORANDUM FOR: Executive Secretary, Security Committee

SUBJECT : Vote Sheet Action

REFERENCE : DCID 1/19 (Draft) - Nondisclosure Agreements for  
Intelligence Sources & Methods Information

DUE DATE : COB 8 July 1976

1. In regard to referenced document:

a. I concur.

b. I concur, subject to the  
comments or amendments  
set forth below in para 2.

XX

c. I disapprove. See comments  
below.

d. I abstain

2. Comments or amendments:\*

a. Paragraph 3, Line 5:

Following the word "contractors" insertion of the  
words "employees of contractors and consultants"

See attached

STAT

NSA Member

Title

National Security Agency

Agency

28 JUL 1976

Date

b. Substitution of the paragraph 4, suggested by CIA for the current paragraph 4.

c. Change the warning notice in paragraph 4 and Subparagraph 5(f) to read "WARNING NOTICE - INTELLIGENCE SOURCES OR METHODS", and retain the abbreviation "WININTEL".

Comment: The use of the marking proposed in the DCID is inappropriate. Historically, its use has been prescribed for classified intelligence requiring special controls and a severely limited distribution to those who have a clear need-to-know. As prescribed by the NSC implementation of EO 11652, it is to be used "for classified information or material relating to sensitive sources and methods". We have heard the argument in the Committee that since the language in Section 102(d), National Security Act of 1947, and Section 7(a), EO 11905, refers only to sources or methods of intelligence, with no qualifications, it encompasses unclassified and the full range of classified intelligence sources and methods, as appropriate. Accepting this and the purpose of the current warning notice, its use in this DCID could lead to a variety of problems, e.g., proving that an unclassified source or a non-sensitive classified source is marked properly when the marking contains the word "Sensitive". We recommend that the IC Staff obtain an exception from the NSC to eliminate the requirement for the use of the current warning notice and permit use of the recommended marking. This would bring the marking in line with the language of EO 11905 and the National Security Act. The sensitivity of classified materials would be denoted by its classification and special markings. As an alternative, we consider a footnote to the warning notice in paragraph 4, substantially as follows, to be essential to avoid misunderstanding of its application:

"1/ This standard marking is adopted for use in labeling information and materials within the purview of this Directive to avoid the need for an additional marking. For purposes of this Directive, the word "SENSITIVE" does not mean that all documents or materials, or parts thereof, on which it appears are classified. The degree of sensitivity of classified intelligence sources or methods will be denoted by the security classification, and any special marking, assigned."

(1) Recommend the word "marking" be substituted for the word "label" in line 5 of paragraph 4.

d. We would prefer the broader exemption of SCI from the labeling requirements as proposed in the footnote to paragraph 4. However, in order to ensure that our major concern, additional labeling of COMINT sources or methods information, is taken care of we would agree to the CIA proposed exemption for COMINT, paragraph 3(b), of the Chairman's 30 June covering memorandum.

Comment: The unique and sensitive nature of COMINT is well recognized primarily by federal statute (18 USC 798),

Executive Order (Section 9, EO 11652) and the NSC implementation of EO 11652 (Section VI F), and International Agreement. The specialized markings for COMINT, the requirements for handling in designated channels and the briefings required for all who are granted access to it, including the execution of agreements/oaths relative to disclosure, etc., constitute, in our view, sufficient notice to meet all the requirements of paragraph 5, of the proposed draft. Accordingly, the prescription of an additional marking for COMINT sources or methods particularly within the Intelligence Community, is deemed unnecessary.

(1) In the event footnote No. 1 is retained, we recommend the first sentence be reworded as follows: "Labeling and control requirements for intelligence sources or methods of Sensitive Compartmented Information meet the requirements of this Directive and accordingly need not bear the additional marking required by this paragraph."

e. Footnote 2, page 4: We do not agree in the suggested footnote.

Comment: Neither the National Security Act of 1947 nor Executive Order 11905 so restrict the term sources or methods of intelligence to classified information. Furthermore, in seeking injunctive relief we would have a category in addition to classification which we could argue would require protection from disclosure. Such action would also leave open the possibility of administrative action in those instances where unclassified sources or methods requiring protection are disclosed in an unauthorized manner.

f. Following the word "INVOLVED", line 5, Subparagraph 5(f), page 5, insertion of the words, "or the special markings prescribed for Communications Intelligence", or "for Sensitive Compartmented Information", as appropriate.